

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**RODERIC C. CATCHINGS**

**APPELLANT**

**VS.**

**NO. 2009-CP-0286**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF ISSUES**

**I. CATCHINGS' APPEAL MUST BE DISMISSED FOR LACK OF JURISDICTION.**

**STATEMENT OF FACTS**

Roderic C. Catchings pleaded guilty to three counts of armed robbery and one count of aggravated assault on November 28, 2005. C.P. 17-18. Catchings was sentenced to twenty years to serve on the aggravated assault charge, and thirty-five year terms on each armed robbery charge, ten years suspended, with all sentences running concurrently. C.P. 25. Catchings subsequently filed a motion for post-conviction relief, arguing that his plea was involuntary because he had been either misinformed or uninformed of the minimum time he was required to serve on the armed robbery charges. C.P. 18, 25-26. On March 17, 2008, a hearing was held on Catchings' motion for post-conviction relief. Catchings explicitly stated on the record that his only complaint regarding the guilty plea hearing was his misunderstanding of the minimum time he would be required to serve for the armed robbery charges. C.P. 20-25. The court found that Catchings had been either

misinformed or uninformed about his mandatory sentence. Accordingly, the court granted Catchings' motion, revising his sentence in accordance with his expectations at the time of the plea so that he would serve only eighteen years on the 35 year sentences for the armed robbery charges. C.P. 25-26.

On November 25, 2008, Catchings filed a second motion for post-conviction relief, again arguing that he was misinformed regarding his sentence, rendering his guilty plea involuntarily. C.P. 30-40. He also claimed that his attorney at the original guilty plea hearing provided ineffective assistance of counsel. C.P. 30-40. On December 19, 2008, the trial court denied the motion as a successive writ. C.P.45-46. On February 5, 2009, Catchings filed a notice of appeal. C.P. 47.

## SUMMARY OF ARGUMENT

Catchings' appeal should be dismissed for lack of jurisdiction as he failed to file his notice of appeal within thirty days of the trial court's order dismissing his motion for post-conviction relief.

## ARGUMENT

Catchings failed to file a notice of appeal within thirty days of the entry of the trial court's order denying post-conviction relief as required by Rule 4(a) of the Mississippi Rules of Appellate Procedure. MRAP 4(a). Catchings also failed to ask the trial court to reopen the time for filing a notice of appeal under Rule 4(h) of the Mississippi Rules of Appellate Procedure. This Court has authority under Rule 2© of the Mississippi Rules of Appellate Procedure to suspend the thirty day requirement of Rule 4(a) for good cause shown. *Jefferson v. State*, 958 So.2d 1276, 1278(¶6) (Miss. Ct. App. 2007). However, Catchings has not demonstrated that his tardy filing was through no fault of his own, or even asked this Court to grant an out-of-time appeal. Accordingly, this honorable Court should dismiss Catchings' appeal for lack of jurisdiction.

If for some reason this honorable Court finds that justice demands granting an out-of-time appeal that Catchings has not asked for, the State would present the following argument. The trial court's March 17, 2008 order granting post-conviction relief is an order in accordance with Mississippi Code Annotated §99-39-23(5). As such, it bars the filing of a successive motion for post-conviction relief. Miss. Code Ann. §99-39-23(6). Catchings has failed to meet any exception to the successive writ bar, as he is not serving an illegal sentence, nor does he claim to have newly discovered evidence, and no intervening decision has been rendered which would effect the outcome of his conviction or sentence. Miss. Code Ann. §99-39-23(6). Accordingly, the trial court properly dismissed Catchings' second petition for post-conviction relief as successive writ barred.

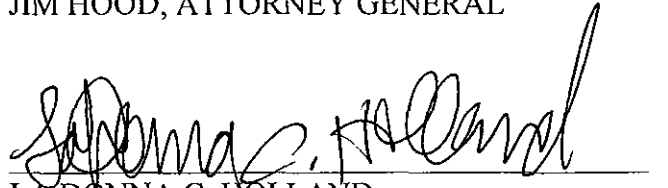
## CONCLUSION

The State asks this Court to dismiss Catchings' appeal for lack of jurisdiction. Alternatively, this Court should affirm the trial court's decision to dismiss the motion as successive writ barred.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

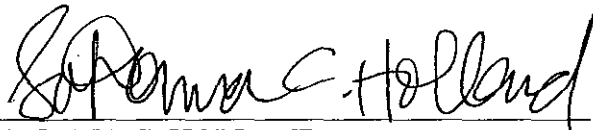
I, LaDonna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson  
Circuit Court Judge  
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Honorable Michael Guest  
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This the 9th day of June, 2009.



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